



VIRGINIA CHILD SUPPORT GUIDELINE REVIEW PANEL: 2005

Senator Frederick M. Quayle, Chairman

Joseph S. Crane, DCSE representative & staff director

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MEETING MINUTES **September 12, 2005 meeting** **House Room C, General Assembly building** **Richmond, Virginia**

The following members were present: Senator Frederick Quayle; Delegate Clifford Athey (arriving 9:50am); Delegate Michele McQuigg; Judge Anne Holton; Judge Wilford Taylor; Ms. Amy Atkinson; Richard Byrd, Esq.; Mr. Joseph Crane; Lawrence Diehl, Esq.; Mr. Brian Hawkins; Mr. Robert Ingalls; Ms. Leslie Sorkhe.

The following members were absent: Delegate William Barlow; Ms. Deborah Parham; Janipher Robinson, Esq.

Guests present: Laura Morgan, Esq., Family Law Consulting, and author of *Child Support Guidelines: Interpretation and Application*.

The fifth working meeting of the 2005 Child Support Guideline Review Panel was held on Monday, September 12, 2005, beginning at 9:00 a.m. in House Room C of the General Assembly building in Richmond, Virginia.

Chairman Frederick Quayle called the meeting to order at 9:30 a.m., requesting review of the previous working meeting's (8/9/05) minutes. The minutes were approved by voice vote after a motion from the floor.

The chair recognized Mr. Ingalls, who presented to the Panel a revised version of his shared custody proposal, which he believed took into account concerns expressed by Panel members over the original proposal. The crux of Mr. Ingalls proposal was to adopt an income shares model he believed would encourage fathers to get more involved with their children, and allow more time to be spent with them. He suggested the current system actually discourages fathers in both regards.

Mr. Diehl rebutted Mr. Ingalls contention, citing the current system as flawed in some respects, but

viable and fair, and noted the General Assembly has tried hard to encourage involvement by noncustodial parents. He rejected the ideas that the current system discourages father involvement, and that Mr. Ingalls's proposal will increase father involvement. He contended the current statute and system work and do not need to be changed.

Following considerable debate, Mr. Byrd suggested Mr. Ingalls concerns might better be addressed as a deviation factor, which would allow the door to be opened to consideration of a noncustodial parent's expenses to adjust a child support obligation without placing an administrative burden on the courts. Judge Holton agreed, citing concern that Mr. Ingalls proposal is not administratively workable at the court level.

The Panel continued to debate the familiar theme of ease of administration of the current system vs. the practicality of administering an Ingalls-type proposal. Mr. Crane observed the harsh reality of the perfect often becoming the enemy of the good: the administrative time needed to achieve a better sense of fairness over the current system is nearly impossible given the current caseload burden and lack of court time in modern society.

Mr. Ingalls made a motion for the Panel to encourage father involvement by recognizing the noncustodial parent's expenses at periods less than 90 days.

The motion was seconded by Mr. Byrd.

Mr. Crane noted, unlike previous Guideline Panels, the current Panel does not cease to exist after filing its report to the General Assembly. The Panel could decide to create a sub-committee to work on this issue for future consideration.

Several members objected to Mr. Ingalls's motion as overly broad and outside the purview of the Panel's mission, citing the Panel is not in the business of endorsing non-binding resolutions, but to recommend proposed changes in the Guideline.

Mr. Byrd agreed, and reiterated that a better substitute is to study the topic of Mr. Ingalls's concern as a proposed deviation factor.

Mr. Ingalls rejected Mr. Byrd's suggestion, stating that viewing the issue as a deviation factor keeps in place the discrimination inherent in the current system, and does not address the bias against noncustodial parents in favor of custodial parents.

Chairman Quayle called for a vote, and Mr. Ingalls's motion failed by voice vote. The Chair thanked Mr. Ingalls for a good deal of hard work, and noted for the record that there is a fair amount of Panel support for his views on this issue, though not for his proposal as presently formulated.

The Chair moved to the next agenda item, a review of support staff's draft of deviation factors per the Panel's decisions from the 8/9/05 meeting.

Delegate McQuigg left the meeting at approximately 10:00am to attend another meeting in the

building.

Mr. Byrd led discussion of the cumulative changes in the deviation factors approved at previous meetings, taking the draft changes from staff and putting them into the actual legislative language that would be submitted to the General Assembly.

Mr. Byrd began by suggesting a change to the statute regarding mandatory retroactivity. The suggestion was to not make retroactive child support mandatory at the outset of a support order, and in order to do this would require a correction to a decision rendered by the Virginia Court of Appeals regarding interpretation of the statute.

This led to substantial discussion over whether the change was necessary, or whether it might already be implied to be within a judge's discretion to make retroactivity optional.

Judge Holton expressed concern the Panel was considering a proposal to legislatively reverse a Court of Appeals *Code* interpretation when it did not have the decision before it for members to review. The concern was whether or not a language problem in fact existed, and if so, if Mr. Byrd's suggestion would fix it. Judge Holton suggested this proposal be tabled until the afternoon when the Panel might be able to review the actual Court of Appeals decision. Judge Taylor agreed.

Chairman Quayle tabled the discussion on the matter until the Panel gets the language of the decision that appears to be causing the problem.

Mr. Byrd moved to the cumulative changes to the deviation factors. In the course of reaching consensus on the actual statutory language, a great deal of discussion ensued, and several minor revisions were made. Three additional changes were individually moved and approved by voice vote. [The sum total of all final recommended changes to Virginia's deviation factors as they will be presented to the General Assembly is listed as Addendum #1, and is attached to these minutes.]

The extensive nature of the total changes to the deviation factors led to discussion regarding how the changes---and other Panel recommendations---might be presented to the General Assembly for consideration. Judge Holton recommended for presentation purposes separating out items the Panel considers minor technical matters from the substantive changes, and presenting the package to the General Assembly in a manner that makes each clear.

Mr. Byrd built upon the above discussion to recommend some final technical changes to the actual statutory text, including paragraph headings to render the text easier to scan.

Delegate Athey built on Judge Holton's suggestion, and urged the Panel to bring the substantive items the Panel fully agrees on to the General Assembly as separate bills, citing concern that many of the issues being discussed will increase the complexity of a single bill and jeopardize its chances of passage.

Mr. Crane offered that Panel staff could divide the Panel's ultimate recommendations into "bite-sized" pieces with self-evident demarcation points to cleanly compartmentalize the issues.

The Chair returned to Mr. Byrd's technical clean up changes to 20-108.2 mainly involving paragraph headings, and sought a motion from the floor.

Mr. Byrd moved the technical changes be adopted. Mr. Diehl seconded. The motion was approved by voice vote. [This motion is in addition to the three separate motions noted earlier.]

The Chair next moved to the issue of considering geographic variations in support calculations. It was noted Delegate McQuigg was interested in this issue, and since she was still absent from the meeting, it was decided to table the issue until later in the day.

The Chair next moved to the issue of forgiving arrearages to selected categories of noncustodial parents, and asked Mr. Hawkins if he wished to offer any proposal for the Panel to consider.

Mr. Hawkins had no proposal, but did have research he wished to distribute. The Chair tabled the issue until copies could be made for dissemination.

The Chair next moved to two case management issues the Panel has been asked to react to by the DCSE representative. Mr. Crane observed that although these issues were not solely Guideline-related, they deal with already-existing questions affecting the interests of both parents and their children, to which the Panel's reaction and advice would be extremely valuable and helpful.

DCSE Regional Special Counsel Alice Burlinson presented the first issue, which relates to situations where child support arrears still exist at the time the youngest child covered by an order is emancipated. It would seem preferable that in such situations, arrears payments should continue at the same rate until all are paid. It would help to have a clarifying amendment to the *Code of Virginia* to state that if child support arrears exist at the time of emancipation of the youngest child, arrears should continue to be paid at the same total amount due under the terms of the child support order.

Ms. Burlinson, along with staff support Anna DeMoss, presented the second issue, which relates to the difficulty of correctly prorating payments of noncustodial parents having multiple child support cases and varying "charge dates" during the month, so that amounts paid for each case correctly follow the specified hierarchy of payment distributions. The solution favored by DCSE would be to make the effective date of all child support orders, including modified orders, the first of the month.

Following some discussion, Delegate Athey offered to carry proposal number two as a bill for General Assembly consideration.

The Chair then returned to the issue of forgiving arrearages, recognizing Mr. Hawkins.

Mr. Hawkins reminded the Panel of his desire to assist and encourage low income, incarcerated and recently released fathers to pay their child support. The research [now distributed] outlined programs across the country that forgive portions of arrears as incentives for the conscientious payment of child support.

The concept of forgiving a portion of arrears owed the state for conscientious behavior, and also the concept of giving custodial parents authority to negotiate a settlement that would allow a portion of an arrearage to be waived in return for a lump sum payment were both deemed to be good conceptual ideas the Panel expressed interest in drafting proposed language for.

Delegate Athey advised that a legislative proposal that would essentially allow a custodial parent to settle an arrearage in return for a lump sum payment probably would stand a good chance of being well received in the General Assembly.

Mr. Crane, referring to the concept of forgiving arrears for conscientious behavior, suggested that if there is sentiment on the Panel to authorize a piece of draft legislation, support staff could float such a draft with the minutes of this meeting.

The Chair stated that seemed to be the consensus of the Panel, and without requesting a vote, expressed an interest that staff do so.

At this point, the Panel broke for lunch.

Delegate McQuigg returned during the lunch break.

Following lunch, Chairman Quayle asked if there were any other issues members believe are crucial to the Panel's 2005 deliberations. No additional issues were identified. The Chair revisited the issue of geographic variations in support calculations.

Delegate McQuigg expressed a need to consider this issue, particularly when one looks at the cost of housing in Northern Virginia. Notwithstanding the fact that she believed this was a huge issue for northern Virginians, she declined at present to take up additional Panel time to pursue this matter.

The Chair invoked Mr. Crane's previously-stated understanding that this Panel, unlike previous Panels, does not cease to exist after issuing its report, and suggested the Panel could establish a subcommittee to take up this issue at a later time for a subsequent proposal to a future Assembly session.

The Chair then returned to the discussion regarding mandatory retroactivity, and noted the Panel now had before it a copy of the Court of Appeals case that seemed to be the source of contention. After brief debate, and with the aid of the actual case before it, the Panel determined that no change in the statute was necessary.

The Chair again returned to the topic of forgiving arrearages, noting language drafted during lunchtime by Judge Holton and Mr. Hawkins. The Panel indicated conceptual support for such a measure, but could not achieve consensus on a proposal.

Delegate McQuigg objected to further discussion, stating the draft as written was too far reaching, too broad and not developed enough to be submitted this year. Delegate Athey agreed.

The Chair noted there was no motion before the Panel, and so took the issue under advisement for a future Panel or Panel meeting. [The Chair's final action on this matter supersedes previous pronouncements made during this meeting.]

The Chair moved to the issue of cost-of-living adjustments to the present Guideline, referring Panel members to Mr. Byrd's proposed new Guideline table.

Mr. Diehl left the meeting at approximately 1:30pm.

Mr. Byrd began the discussion, noting additional minor adjustments to the table currently before the Panel.

Delegate McQuigg indicated she would not support Mr. Byrd's proposal as it currently stands, citing discomfort with the "hand-inputted" numbers where the curve is smoothed, the complicated formula underlying the table, and the inflation factor utilized.

Considerable debate regarding the table ensued.

Chairman Quayle welcomed Laura Morgan into the debate, and requested her opinion concerning whether there might be anything the Panel is overlooking in the discussion, or which might need clarification.

Ms. Morgan imparted an opinion she hoped would increase the Panel's comfort level with the concept of adjusting the Guideline for inflation, and concurred with Mr. Byrd that the Guideline should be so updated.

The Chair reminded members that this is the last scheduled meeting of the Guideline Panel. If it is deemed absolutely necessary, another meeting can be scheduled, but his feeling was the Panel should address this issue now, while a large number of members are still present.

Judge Holton was troubled with one element of the table, where Mr. Byrd smoothed the curve at the low income end. She felt the smoothing combined with a proposed self-support reserve would unduly cut the Guideline at the low end of the table. She suggested that if the inflation-adjusted table did not reduce current Guideline amounts at the low income end, it would bring about a more equitable apportionment.

Delegate Athey speculated that if the self-support reserve, as a stand-alone bill before the General Assembly didn't fly, then the balance Judge Holton seeks would be upended, illustrating the inherent problems with leveling out [and curve smoothing], which ultimately leads to a debate about values.

The Chair sought a motion from the floor.

Mr. Byrd moved to adopt the new inflation-adjusted Guideline table with the exception of the low income portion. To clarify: any numbers on the new table that are lower than the current table shall

be amended upward to reflect the amount in the current table.

Judge Holton seconded.

Mr. Byrd's motion to adopt the new inflation-adjusted Guideline table as described above was approved by a vote of seven "yes," to four "no." [See Addenda Nos. 2 – 4]

Mr. Crane raised administrative matters about what happens from this point on, since there is no additional meeting planned. He proposed staff support draft an initial report for Panel review. He hoped an initial draft could be prepared by the early part of October at the latest.

Chairman Quayle extended his sincere appreciation to the members for their dedication to the Panel's task over the past six months, and expressed optimism that much of what the Panel has recommended will receive favorable consideration by the General Assembly.

Having no other business before the Panel, Chairman Quayle declared the meeting adjourned at approximately 2:30 p.m.

Minutes were circulated in draft to Panel members on September 26, 2005, electronically or by paper copy. The only comments received from Panel members were addenda clarifications by Richard Byrd, which were incorporated in the modification circulated on October 12, 2005. Chairman Quayle conveyed approval of the October 12 modified minutes and addenda via phone on October 19, 2005.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Joseph S. Crane". The signature is fluid and cursive, with the first name "Joseph" and last name "Crane" clearly distinguishable.

Joseph S. Crane

DCSE Staff Director and Panel member